

HOUSE BILL NO. 119

INTRODUCED BY R. LENHART

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

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5 A BILL FOR AN ACT ENTITLED: "AN ACT DESIGNATING THE PAY PERIOD THAT INCLUDES DECEMBER  
6 31 AS THE ENDING PAY PERIOD FOR DETERMINING TOTAL ACCUMULATED ANNUAL VACATION  
7 LEAVE; PROVIDING THAT EXCESS VACATION TIME IS NOT FORFEITED IF TAKEN BY THE END OF THE  
8 PAY PERIOD THAT INCLUDES MARCH 31 FOLLOWING THE LAST DAY OF THE CALENDAR YEAR IN  
9 WHICH THE EXCESS WAS ACCRUED; AUTHORIZING AGENCIES TO NEGOTIATE WITH EXCLUSIVE  
10 REPRESENTATIVES FOR A REDUCTION IN HOLIDAYS, ANNUAL VACATION LEAVE CREDITS, OR SICK  
11 LEAVE CREDITS IN EXCHANGE FOR AN INCREASE IN COMPENSATION OR BENEFITS; AMENDING  
12 SECTIONS 2-18-603, 2-18-611, 2-18-612, 2-18-617, AND 2-18-618, MCA; AND PROVIDING AN EFFECTIVE  
13 DATE."

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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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17 **Section 1.** Section 2-18-603, MCA, is amended to read:

18 **"2-18-603. Holidays -- observance when falling on employee's day off.** (1) (a) Except as provided  
19 in [section 6], a full-time employee who is scheduled for a day off on a day that is observed as a legal holiday,  
20 except Sundays, is entitled to receive a day off with pay either on the day preceding the holiday or on another  
21 day following the holiday in the same pay period or as scheduled by the employee and the employee's  
22 supervisor, whichever allows a day off in addition to the employee's regularly scheduled days off, provided the  
23 employee is in a pay status on the employee's last regularly scheduled working day immediately before the  
24 holiday or on the employee's first regularly scheduled working day immediately after the holiday.

25 (b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted by  
26 the department of administration or appropriate administrative officer under 2-18-604.

27 (c) A short-term worker may not receive holiday pay.

28 (2) For purposes of this section, the term "employee" does not include nonteaching school district  
29 employees."  
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1           **Section 2.** Section 2-18-611, MCA, is amended to read:

2           **"2-18-611. Annual vacation leave.** (1) ~~Each~~ Except as provided in [section 6], each permanent full-time  
 3 employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits  
 4 earned must be credited at the end of each pay period. However, employees are not entitled to any vacation  
 5 leave with pay until they have been continuously employed for a period of 6 calendar months.

6           (2) Seasonal employees earn vacation credits. However, seasonal employees must be employed for  
 7 6 qualifying months before they may use the vacation credits. In order to qualify, seasonal employees shall  
 8 immediately report back for work when operations resume in order to avoid a break in service.

9           (3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked  
 10 the qualifying period.

11           (4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

12           (5) Temporary employees earn vacation leave credits but may not use the credits until after working  
 13 for 6 qualifying months.

14           (6) A short-term worker, as defined in 2-18-101, may not earn vacation leave credits, and time worked  
 15 as a short-term worker does not apply toward the person's rate of earning vacation leave credits."  
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17           **Section 3.** Section 2-18-612, MCA, is amended to read:

18           **"2-18-612. Rate earned.** (1) ~~Vacation~~ Except as provided in [section 6], vacation leave credits are  
 19 earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of  
 20 an employee's employment with any agency whether the employment is continuous or not:

Years of employment	Working days credit
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

26           (2) (a) For the purpose of determining years of employment under this section, an employee eligible  
 27 to earn vacation credits under 2-18-611 must be credited with 1 year of employment for each period of:

28           (i) 2,080 hours of service following his date of employment; an employee must be credited with 80 hours  
 29 of service for each biweekly pay period in which he is in a pay status or on an authorized leave of absence  
 30 without pay, regardless of the number of hours of service in the pay period; or

1 (ii) 12 calendar months in which he was in a pay status or on an authorized leave of absence without  
2 pay, regardless of the number of hours of service in any one month. An employee of a school district, a school  
3 at a state institution, or the university system must be credited with 1 year of service if he is employed for an  
4 entire academic year.

5 (b) State agencies, other than the university system and a school at a state institution, must use the  
6 method provided in subsection (2)(a)(i) to calculate years of service under this section."  
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8 **Section 4.** Section 2-18-617, MCA, is amended to read:

9 **"2-18-617. Accumulation of leave -- cash for unused -- transfer.** (1) (a) Except as provided in  
10 subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum  
11 number of days earned annually as of the end of the ~~first pay period of the next calendar year~~ pay period that  
12 includes December 31. Excess vacation time is not forfeited if taken ~~within 90 calendar days from~~ by the end  
13 of the pay period that includes March 31 following the last day of the calendar year in which the excess was  
14 accrued.

15 (b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an  
16 employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written  
17 request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a)  
18 and the employing agency denies the request, the excess vacation leave is not forfeited and the employing  
19 agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year  
20 in which the leave would have been forfeited under subsection (1)(a).

21 (2) An employee who terminates employment for a reason not reflecting discredit on the employee is  
22 entitled upon the date of termination to cash compensation for unused vacation leave, assuming that the  
23 employee has worked the qualifying period set forth in 2-18-611.

24 (3) However, if an employee transfers between agencies of the same jurisdiction, cash compensation  
25 may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the  
26 accrued vacation credits transferred with the employee.

27 (4) This section does not prohibit a school district from providing cash compensation for unused  
28 vacation leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in  
29 the absence of a collective bargaining agreement, through a policy."  
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1           **Section 5.** Section 2-18-618, MCA, is amended to read:

2           **"2-18-618. (Temporary) Sick leave.** (1) ~~A~~ Except as provided in [section 6], a permanent full-time  
3 employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080  
4 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period.  
5 Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the  
6 number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they  
7 have been continuously employed 90 days.

8           (2) An employee may not accrue sick leave credits while in a leave-without-pay status.

9           (3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the  
10 qualifying period.

11           (4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work  
12 the qualifying period.

13           (5) A short-term worker may not earn sick leave credits.

14           (6) An employee who terminates employment with the agency is entitled to a lump-sum payment equal  
15 to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick  
16 leave must be computed on the basis of the employee's salary or wage at the time the employee terminates  
17 employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment  
18 provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the  
19 sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July  
20 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee  
21 is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the  
22 liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

23           (7) An employee who receives a lump-sum payment pursuant to this section and who is again employed  
24 by any agency may not be credited with sick leave for which the employee has previously been compensated.

25           (8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in  
26 this section.

27           (9) An employee may contribute any portion of the employee's accumulated sick leave to a  
28 nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive  
29 illness or accident exhausts the employee's accumulated sick leave. The department of administration shall, in  
30 consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the

1 sick leave fund and adopt rules to implement this subsection.

2 (10) A local government may establish and administer through local rule a sick leave fund into which  
3 its employees may contribute a portion of their accumulated sick leave.

4 **2-18-618. (Effective on occurrence of contingency) Sick leave.** (1) ~~A~~ Except as provided in [section  
5 6], a permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick  
6 leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end  
7 of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without  
8 restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid  
9 sick leave until they have been continuously employed 90 days.

10 (2) An employee may not accrue sick leave credits while in a leave-without-pay status.

11 (3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the  
12 qualifying period.

13 (4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work  
14 the qualifying period.

15 (5) A short-term worker may not earn sick leave credits.

16 (6) Except as otherwise provided in 2-18-1311, an employee who terminates employment with the  
17 agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave.  
18 The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or  
19 wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave  
20 credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment  
21 is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any  
22 sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between  
23 agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between  
24 agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1,  
25 1971, and transferred with the employee.

26 (7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to  
27 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who  
28 is again employed by any agency may not be credited with sick leave for which the employee has previously  
29 been compensated or for which the employee has received an employer contribution to the health care expense  
30 trust account.

1 (8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in  
2 this section.

3 (9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave  
4 to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an  
5 extensive illness or accident exhausts the employee's accumulated sick leave, irrespective of the employee's  
6 membership or nonmembership in the employee welfare benefit plan established pursuant to 2-18-1304. The  
7 department of administration shall, in consultation with the state employee group benefits advisory council,  
8 provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

9 (10) A local government may establish and administer through local rule a sick leave fund into which  
10 its employees may contribute a portion of their accumulated sick leave."  
11

12 **NEW SECTION. Section 6. Reduction of holidays, annual vacation leave credits, or sick leave**  
13 **credits -- collective bargaining.** An agency may negotiate a written agreement with an exclusive  
14 representative, as defined in 39-31-103, that reduces the number of paid holidays, annual vacation leave credits,  
15 or sick leave credits provided in this part in exchange for an increase in compensation or benefits.  
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17 **NEW SECTION. Section 7. Codification instruction.** [Section 6] is intended to be codified as an  
18 integral part of Title 2, chapter 18, part 6, and the provisions of Title 2, chapter 18, part 6, apply to [section 6].  
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20 **NEW SECTION. Section 8. Effective date.** [This act] is effective July 1, 2003.  
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